



United States
Department of
Agriculture

Food and
Nutrition
Service

Mountain
Plains
Region

1244 Speer Boulevard
Denver, CO 80204

Reply to SP-95-10
Attn. of: CACFP-428
SFSP-267

APR 19 1995

Subject: Applications for Waivers in the Child Nutrition Programs

To: STATE AGENCY DIRECTORS - Colorado ED, Colorado DH, Colorado SS, Iowa,
(Child Nutrition Programs) Kansas, Missouri ED, Missouri DH, Montana OPI,
Montana DHES, Nebraska ED, Nebraska SS,
North Dakota, South Dakota, Utah, Wyoming ED,
Wyoming DHSS

Attached for your information is guidance material to be used by your Agency to apply for waivers under Section 112(d) of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994.

As indicated in this guidance material, we are recommending that you consult with our office when you are developing waiver requests. All waiver requests are to be submitted to our office and will, in turn, be submitted to our National Office for final approval or denial. Please note from the guidance that a waiver request from a local entity is to be submitted to you first and that we view your role in this process as both a facilitator and a collaborator. We would expect that a waiver request from a local entity would have your support; i.e., waivers should not be submitted if you cannot fully support them or if you believe them to be inconsistent with statutory intent. Particular attention should be given to the waiver limitations that are listed on the last page of the guidance.

If you have any questions on this material, please contact the respective Program area in our office.

Ann C. De Groat

ANN C. DEGROAT
Regional Director
Child Nutrition Programs

Attachment

STATUTORY AND REGULATORY WAIVERS IN THE CHILD NUTRITION PROGRAMS

Statutory Authority

Section 112(d) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448), enacted on November 2, 1994, amended Section 12 of the National School Lunch Act to give the Secretary of Agriculture authority to waive certain statutory and regulatory provisions which govern the Child Nutrition Programs.

Pre-application Considerations

Eligibility - Applications for waivers may be made by State agencies which administer the Child Nutrition Programs (including Food and Consumer Service Regional Offices that operate ROAP programs) either for themselves or on behalf of local entities which are participating in the Child Nutrition Programs.

General Considerations - When deciding whether or not to submit a specific waiver request, State agencies and local entities should keep in mind that the Department will be guided by its understanding of specific statutory provisions which govern the waiver provisions, as well as the Congressional intent which supports them. As stated in House Report 103-535, which accompanied H.R. 8 during its consideration by the Congress, the former House Committee on Education and Labor believed that Federal assistance for Child Nutrition Programs should be provided in a way which permits flexibility in the implementation of the those Programs and which eliminates unnecessary administrative burdens, paperwork, and overly prescriptive regulations. However, the Committee indicated that there should be certain requirements for waivers including: the facilitation of program administration and benefit delivery; appropriate public notification; and no increase in the Federal cost of the program. Consistent with that intent, and in recognition of the burden on all levels of program administration associated with these waiver requests, the Department will review all submissions for their demonstrable benefit to State and local program administrators and program beneficiaries and for their consistency with Congressional intent.

State Involvement in Local Agency Applications - When a State agency is submitting a waiver request on behalf of a local entity, the Department views the State agency role as both a facilitator and a collaborator. In this role, the State agency is expected not only to give advice and technical assistance to the local entity, if necessary, but also to approve its waiver request as being consonant with the spirit and letter of the law. State agencies should not submit waiver requests on behalf of local entities if they cannot fully support them or if they believe them to be inconsistent with statutory intent.

Consultation with Regional Offices - State agencies are encouraged to consult with their Food and Consumer Service Regional Office when considering waiver applications.

Public Notification - State agencies and local entities are required to provide public notification of their intent to seek specific waivers, as well as notification of the Department's decisions with regard to waiver applications within the State. Such notice and information must be provided in the same manner in which the State agency or local entity normally provides similar notices and information to the public.

State and Local Reporting - Local entities that receive a waiver must annually submit to the State agency a report which describes how they are using the waivers and evaluates, where applicable, how the waiver has contributed to improved services to program participants; the impact of the waivers on providing nutritional meals to participants; and how the waivers have reduced the quantity of paperwork necessary to administer the program. In addition, State agencies must submit an annual report to the Department that summarizes all waiver activity within the State and describes whether waivers resulted in improved services to children and adults; the impact on providing nutritional meals to participants; and how they reduced the quantity of paperwork necessary to administer the program.

Duration of Waivers - The Department may only grant waivers for a period not to exceed 3 years. However, the Department may extend the authority for a waiver beyond the 3-year period if it determines that the waiver has been effective in enabling the State or local entity to carry out the purposes of the program.

Application Procedures

Applications for waivers under section 12(l) of the National School Lunch Act should be forwarded by State agencies to the Director, Child Nutrition Programs in their Food and Consumer Service Regional Office. Food and Consumer Service Regional Offices are responsible for reviewing waiver applications and forwarding them to the Director of the Child Nutrition Division along with their evaluation of the applications and recommendations for approval or denial.

Content of Applications

Waiver applications should be in narrative form and written as concisely as possible. In no case should an application exceed 10 pages in length. Applications should follow the structure set out below and, at a minimum, contain the following:

Part A - Identification of the State agency and, if applicable, identification of the local entity for which the waiver is being sought, including its name and address, the Child Nutrition Program(s) in which it participates, and a general description of the size and scope of its program.

Part B - Identification/description of the specific statutory or regulatory requirements for which the waiver is being sought, including the applicable citations (e.g., section 13(a)(7)(B)(ii) of the National School Lunch Act; 7 CFR Part 210.20(b)(11)).

Part C - A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.

Part D - A description of actions that the State has undertaken to remove any State-level barriers (either statutory or regulatory) to achieve the result sought under the waiver. If not applicable, that should be indicated.

Part E - A description of the State's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.

Part F - A description of the management goals to be achieved under the proposed waiver (e.g., specific saving of time, fewer personnel required to administer the program, etc.).

Part G - A description of the State's plan for implementing the program change envisioned under the waiver, including a timetable for implementation.

Part H - A description of the process to be used by the State and, if applicable, the local entity to monitor the implementation, operation and progress of the change resulting from the waiver, including the process for monitoring the waiver's cost to the Federal government.

Part I - A description of funding source(s) to be used to offset any additional costs resulting from the implementation of the waiver, if applicable.

Part J - A description of the process used by the State and, if applicable, the local entity to provide notice and information to the public regarding the proposed waiver and a certification that such notice has been provided in the same manner customarily used by the State or local entity to provide similar notices and information to the public.

Waiver Limitations

When considering a waiver request submission, State agencies and service providers should be guided by the limitations on waivers imposed in the statute. In this regard, the Department is not permitted to waive any current statutory or regulatory requirements related to:

- * the nutritional content of meals;
- * offer versus serve;
- * the individual entitlement to free and reduced price meals;
- * the maximum amount charged for a reduced price meal;
- * Federal reimbursement rates;
- * the distribution of program funds to State and local entities participating in the Child Nutrition Programs;
- * the equitable participation of private schools and the children attending private schools;
- * maintenance of effort;
- * the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;
- * the commodity distribution program under section 14 of the National School Lunch Act;
- * the maintenance of non-profit food service operations;
- * the sale of competitive foods; and
- * enforcement of any individual rights established under the Constitution of the United States and Federal statutes.

Responsibilities of the Department

The Department will promptly inform State agencies in writing the reasons for granting or denying requests.

The Department will periodically review the performance of any State agency or local entity operating under a waiver. If such performance has been inadequate, the Department will terminate the waiver authority. Likewise, the Department will terminate a waiver if it is determined that it has resulted in an increase in the program's cost to the Federal government.

The Department will submit an annual report to the Congress which summarizes the use of waivers by State agencies and local entities; describes whether the waivers resulted in improved services to children; describes the impact of the waivers on providing nutritional meals to participants; and describes how the waivers reduced the quantity of paperwork necessary to administer the program.